

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

August 20, 2001 Session

**TAMMY JEAN DEDMON v. TENNESSEE FOOD SERVICES, INC. d/b/a
BONANZA RESTAURANTS**

**Direct Appeal from the Circuit Court for Henry County
No. 1355 C. Creed McGinley, Judge**

No. W2001-00067-WC-R3-CV - Filed March 8, 2002

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer contends the evidence preponderates against the trial court's award of twenty-five percent (25%) permanent partial disability to the body as a whole. For the reasons stated in this opinion, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Circuit Court
Affirmed**

W. MICHAEL MALOAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and JOE C. LOSER, JR., SP. J., joined.

Charles L. Hicks, Camden, Tennessee, for the appellee, Tammy Jean Dedmon

William F. Kendall and Jay Dustin King, Jackson, Tennessee, for the appellant Tennessee Food Services, Inc. d/b/a Bonanza Restaurants

MEMORANDUM OPINION

The plaintiff, Tammy Jean Dedmon (Dedmon) was thirty (30) years old at the time of trial. She completed the tenth (10th) grade in school, and had not obtained a GED. Prior to working for the defendant, Tennessee Food Services, Inc. d/b/a Bonanza Restaurants, Inc. (Bonanza), Dedmon worked as a waitress, seamstress and inspector at a garment factory, a driver for a car lot, and a sander and packer at a cabinet factory.

On July 19, 1998, Dedmon slipped and fell at work while carrying a metal pan of rolls. She hit her head, back and shoulder. She went to the emergency room at the Henry County Medical Center the next day. On July 28, 1995, Dedmon saw Dr. Charles Walker who reviewed her x-rays and diagnosed a bulging disc at L4-L5 with sciatica.

Dedmon saw Dr. Anthony Segal on August 13, 1998, with complaints of low back and right leg pain. Dr. Segal noted her MRI showed minor bulge at L4-L5, but stated her MRI was normal. Dr. Segal saw Dedmon on three more visits and sent her to physical therapy. Dr. Segal could not find anything to explain her symptoms and referred her to Dr. John Brophy for a second opinion.

Dr. John Brophy saw Dedmon on September 16, 1998, and September 30, 1998. He diagnosed mechanical back pain and right sacroiliitis with exaggeration of pain. Dr. Brophy released her to return to work on September 30, 1998, and did not assign any permanent impairment.

After being released to return to work by Dr. Brophy in September of 1998, Dedmon attempted to return to her job at Bonanza. She worked as a cashier for three days, and quit due to pain in her back.

Dedmon saw Dr. Wayland Brooks, a chiropractor, on April 19, 1999, and he continued to treat her through December 14, 1999. Dr. Brooks assigned a sixteen percent (16%) permanent impairment to the whole person according to the AMA Guides for vertebral subluxation complex in the lumbar spine with constant pain. Dr. Brooks referred Dedmon to Dr. Ray Hester, a neurologist. Dr. Hester saw her on June 1, 1999, diagnosed a degenerative joint, and assigned a five percent (5%) permanent impairment to the whole person pursuant to the AMA Guides. Dr. Hester placed permanent restrictions of no stooping or twisting, occasional climbing, kneeling, crouching or crawling, and lifting restrictions of ten (10) pounds frequently and never more than twenty (20) pounds.

Dr. Robert J. Barnett evaluated Dedmon on June 7, 1999. Dr. Barnett noted the L4-L5 disc bulge and assigned a ten percent (10%) permanent physical impairment to the whole person due to her "sensitive disc," muscle spasms and limited range of motion. Dr. Barnett stated Dedmon was not a candidate for any work that required lifting, bending, stooping, or squatting. Dedmon did not give Dr. Barnett a history of prior back problems from a 1993 automobile accident.

Dedmon was also seen by Dr. Michael Cobb for an independent medical evaluation on November 9, 1999. Dr. Cobb found "nothing objective to indicate a true physical injury and a lot of exaggeration of symptoms." Dr. Cobb treated Dedmon for a 1993 lumbar strain from an automobile accident. His medical records of May 10, 1993, state, "I reassured her I see no sign of serious permanent injury."

Dedmon next saw Dr. Michael Glover on April 14, May 11, and August 24, 2000. His final diagnosis was an annular tear at L4-L5 with lumbar pain.

Dedmon strained her back in a 1993 automobile accident, but worked several jobs since then without any pain. She testified she was fully recovered from the back strain when she fell at Bonanza. Dedmon testified she had a very active life prior to her fall at work, but now relies on her husband to help her with the household chores. She described the pain in her back as a constant throbbing, burning, and tingling. She testified she doesn't feel like she can hold a job.

At trial the parties stipulated Dedmon sustained a compensable injury, proper notice was given, and the only issue was the extent of vocational disability, if any. The trial court found Dedmon had sustained a twenty-five percent (25%) permanent partial disability to the body as a whole.

The scope of review of issues of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Lollar v Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Krick v City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. *Overman v Williams Sonoma, Inc.*, 803 S.W.2d 672, 676-77 (Tenn. 1991).

As in many workers' compensation cases, the opinions of the treating and evaluating physicians regarding physical impairment vary greatly. The trial court has the discretion to accept the opinion of one physician over that of another unless the evidence preponderates against the medical opinion. *Kellerman v Food Lion, Inc.*, 920 S.W.2d 333, 335 (Tenn. 1996); *Johnson v Midwesco*, 801 S.W.2d 804, 806 (Tenn. 1990). The trial court considered medical testimony ranging from no physical impairment to sixteen percent (16%) permanent physical impairment and severely limiting physical restrictions. In his decision, the trial court noted Dr. Brooks' rating of sixteen percent (16%) to be "a little exorbitant" and relied instead on the ten percent (10%) rating of Dr. Barnett.

Bonanza submits Dr. Barnett's impairment rating should be disregarded because his opinion is at odds with other physicians' opinions, particularly Dr. Cobb. After a careful review of the medical evidence in this case, we find the evidence does not preponderate against the trial court's reliance on Dr. Barnett's medical opinion.

In assessing vocational disability, the trial court is required to consider many relevant factors other than the medical testimony such as the age, education, skills and training, local job opportunities and capacity to work at types of employment available in the worker's disabled condition. Tenn. Code Ann. § 50-6-241(a)(1); *Worthington v Modine*, 798 S.W.2d 232, 234 (Tenn.

1990); *Roberson v Loretto Casket Co.*, 722 S.W.2d 380, 384 (Tenn. 1986). In the present case, the trial court considered each of these factors in his decision and we find the evidence does not preponderate against the trial court's award of twenty-five percent (25%) permanent partial disability to the body as a whole.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the defendant, Tennessee Food Services, Inc. d/b/a Bonanza Restaurants.

W. MICHAEL MALOAN, SPECIAL JUDGE

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the defendant/appellant, Tennessee Food Services, Inc. d/b/a Bonanza Restaurants, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM